

Appl. No. : 10/090,561
Filed : March 4, 2002

REMARKS

With this amendment, Claims 1-9 and 12 are pending in the present application. Claims 1, 4, and 8 have been amended. Claims 10-11 and 13-15 have been canceled. In view of the foregoing amendments and following remarks, Applicant respectfully requests reconsideration of the above-captioned application.

Claim Rejections – 35 U.S.C. 102(a and b) and 103(a)

The Examiner rejected the pending claims under 35 U.S.C. 102(a and b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gleeson et al. '697, Merkley et al. '745, Duselis et al '248 or '146, Brook et al '310, Francis et al. '518, Styron '137, '480, ' or '632, Brothers et al. '921, Kirkpatrick et al. '889 or '283, Onan et al. '521, Smetana et al. '255, Lowe '548, Willis Jr. '316, or Minnick '134 or '408.

After reviewing each of these references, Applicant notes that none of these references disclose or suggest a method of improving a coating formulation comprising adding to a binder a dewatering agent comprising fly ash of two size fractions. While the cited references disclose the addition of fly ash to a cementitious mixture, Applicant respectfully submits that none of these references relate to a *method* of improving a coating by adding *a dewatering agent* to the coating mix. Particularly, none of the references disclose adding a dewatering agent comprising fly ash of two different size fractions. (See, *e.g.* Claim 1 as amended) As such, Applicant respectfully submits that the pending claims are patentable over these references.

Double Patenting Rejection

The Examiner rejected the pending claims under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent Nos. 6,572,697 to Gleeson et al., 6,676,745 to Merkley et al., 6,506,248 to Duselis et al., or 6,346,146 to Duselis et al. Applicant respectfully requests the Examiner hold this rejection in abeyance until allowable claims have been identified in the present application.

Claim Rejections – 35 U.S.C. §112

The Examiner also rejected Claims 1-15 under 35 U.S.C. 112, second paragraph as failing to set forth the subject matter which Applicants regard as their invention. By this amendment, Applicant has correct various issues noted by the Examiner and respectfully requests withdrawal of this rejection.

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PTO-1449 Submission

Applicant is submitting under separate cover an Information Disclosure Statement that the Applicant is aware of and which may be relevant to the present examination, including the recently allowed application by the Examiner.


Conclusions

In view of the foregoing, Applicant respectfully submits that all pending claims of the present application are in condition for allowance, and such action is earnestly solicited. Should there be any impediment to the prompt allowance of this application that could be resolved through a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 9/20/2004

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